

**OCCUPATIONAL SAFETY
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**FINAL STATEMENT OF REASONS****CALIFORNIA CODE OF REGULATIONS****TITLE 8: Chapter 4, Subchapter 4, Article 6, Section 1541
of the Construction Safety Orders****Excavations, General Requirements****MODIFICATIONS AND RESPONSE TO COMMENTS RESULTING FROM
THE 45-DAY PUBLIC COMMENT PERIOD AND THE
15-DAY NOTICES OF PROPOSED MODIFICATION**

There are no modifications to the information contained in the Initial Statement of Reasons except for the following substantive, and/or sufficiently related modifications that are the result of public comments and Board staff evaluation.

This modified rulemaking proposal also contains non-substantive, editorial formatting of proposed language to improve clarity and readability, grammatical revisions, and revisions to ensure consistency among the proposal, Chapter 651 of the Statutes of 2006, and the portions of Government Code (GC) Sections 4216 – 4216.9 that are not amended pursuant to Chapter 651.

Section 1541. General Requirements.

This section contains standards consistent with GC Section 4216 et seq., which addresses the statutory requirements for excavations around subsurface installations. Senate Bill (SB) 1359, introduced by State Senator Tom Torlakson and chaptered as Chapter 651 of the Statutes of 2006, contains amendments to GC Sections 4216 (definitions), 4216.2 (excavator duty to contact the Regional Notification Center (RNC)), 4216.3 (subsurface installation locating), 4216.4 (excavator duty to determine the exact location of subsurface installations) and 4216.7 (failure of excavator to comply with GC notification requirements). Specifically, the bill 1) addresses excavations within 10 feet of high priority subsurface installations, 2) permits only qualified persons to conduct line-location activities using specified devices, 3) requires the RNC to provide operator contact information to excavators, and 4) requires excavators to contact the facility owner/operator and 911 emergency services in case of discovery or causing damage to the subsurface installation.

Subsection (b)(1)(A)2.

New subsection (b)(1)(A)2. requires the excavator to receive a positive response from all known operators of subsurface installations within the boundaries of the proposed project prior to commencing excavation. Subsection (A)2. defines what constitutes positive response from the owner/operator of subsurface underground installations.

The purpose and necessity of this editorial modification is to reorganize the sentence structure of subsection (A)2. into one that more clearly indicates the employer's positive response responsibilities prior to excavation.

Subsection (b)(1)(B)

A modification is proposed to delete the previously proposed phrase "...or in conflict with..." as it is redundant and unnecessary since the proposal already requires any excavation within 10 feet of a high priority subsurface installation (installation) to require an onsite pre-excavation meeting to verify the location of the installation. Further modifications are proposed to add the phrase "...the excavator shall be notified by the facility owner/operator of the existence of the high priority subsurface installation before the legal excavation start date and time in accordance with GC Section 4216.2(a), and..." in the first sentence. The purpose and necessity of this modification is to clearly indicate to the excavator and the operator consistent with SB 1359 and proposed amendments to GC Section 4216, that the onsite meeting required in subsection (B) takes place before the excavation begins.

Further modifications are proposed to clarify that the onsite meeting between the excavator and the facility owner/operator is to be scheduled by the excavator and the facility owner/operator at a mutually agreed on time prior to beginning the excavation. The purpose and necessity of this modification is to ensure that it is clear which parties are responsible for scheduling the onsite meeting.

A modification is proposed to delete the previously proposed phrase "...high voltage electric supply lines..." in the second sentence of subsection (B) because it is inconsistent with the wording discussed in the next paragraph.

A modification is proposed to change the existing proposed language to read 60,000 volts or more to harmonize this requirement with GC Code section 4216(e) which reads "greater than or equal to 60kv (60,000 volts). The purpose and necessity of the proposed modification is to clarify to the employer that consistent with the GC, a high priority subsurface installation includes conductors or cables greater than or equal to 60,000 volts.

Subsection (b)(1)(C)

Modifications are proposed to reword the first sentence in subsection (C) to state that qualified persons "shall" perform subsurface installation location activities in accordance with Section 1541 and Government Code sections 4216 through 4216.9. The purpose and necessity of this

modification is to clarify to the employer that, consistent with the intent of the proposed standard, only qualified persons as defined in subsection (C) can perform line-locating activities in order to ensure that inadvertent contact with subsurface installations is avoided.

Further modifications are proposed to update the existing proposed reference to the Common Ground Alliance (CGA) Best Practices manual from the version 2.0 dated December 2004, to version 3.0 dated March 2006. The purpose and necessity of this modification is to ensure the regulated public will have access to the latest state-of-the-art CGA training guidelines and practices for line-locating technicians.

It is proposed that subsection (b)(1)(C) be modified to restore the word “only” before the term “qualified persons” and add the phrase “and all such activities shall be performed” in the first sentence. These proposed modifications are editorial in nature and necessary to the extent they improve the readability of the proposed language and clarify to the employer that subsurface line-locating activities can only be performed by a qualified person in accordance with GC sections 4216 through 4216.9.

Subsection (b)(1)(D)

A modification is proposed to clarify to the employer that the training required by subsection (b)(1)(D) is to be directed specifically at those employees involved in excavation operations who are exposed to excavation hazards and not to other personnel not involved in the excavation process. The purpose and necessity of the proposed modification is to ensure that employer-training resources are efficiently and properly applied to those employees at risk in terms of their exposure around jobsite excavation operations.

Subsection (b)(2)

A modification is proposed to change the GC reference from subsection (h) to subsection (j) consistent with the changes made to the GC as a result of Chapter 651. A further modification is proposed to editorially revise the sentence structure of the Exception to make it clear that the term “emergency” is the term defined in GC section 4216(d). The proposed modifications are editorial in nature to clarify to the employer the meaning of subsection (b)(2) with regard to emergency repair work.

Subsection (b)(3)

A modification is proposed to delete the words “in conflict.” These two words are being deleted because they are unnecessary, redundant and confusing. This deletion is consistent with its proposed deletion in subsection (b)(1)(B). GC 4216(a), as set forth in Chapter 651, already defines the “approximate location” as a strip of land not more than 24 inches on either side of exterior surface of the subsurface installation. Therefore, the term “in conflict” only creates confusion and needs to be deleted for clarity.

Subsection (b)(5)

A modification is proposed to subsection (5) to add the words “immediately” and “contact” and the phrase “...to obtain subsurface installation operator contact information...” in the first sentence. The purpose and necessity of the proposed modification is to ensure that in the event the excavator discovers or causes damage to the subsurface installation, it is clear that it is the excavator’s responsibility to immediately contact the RNC to obtain the contact information as to who owns/operates the damaged subsurface facility and inform the owner/operator of the damage.

In cases where hazardous materials, as called forth in the modified language, are released as a result of accidental contact that threatens the health and safety of workers and/or the general public, and property, the excavator is to immediately contact 911 and the facility owner/operator.

A modification is proposed to add language that requires the excavator responsible for damage to a high priority subsurface installation that results in the escape of any flammable, toxic or corrosive gas or liquid or endangers life, health, or property, to contact 911 or the appropriate emergency response personnel having jurisdiction in the event 911 is unavailable. The purpose and necessity of this modification are to ensure that in the event damage occurs to a high priority subsurface installation in an area not served by 911, emergency response personnel are contacted immediately.

Further modifications are proposed to delete the language of the Note for replacement by language as similarly suggested by the CRCGA which reads: “The terms excavator and operator as used in Section 1541(b) shall be as defined in Government Code Section 4216(c) and (h) respectively.” It is also proposed that the Note be further modified to include a sentence which explains the meaning of the term “owner/operator” used in Section 1541 as meaning the same as the definition of operator contained in GC Section (h). The proposed modifications are necessary to ensure that the operative terminology used in subsection (b) is consistent with the GC to avoid any confusion.

Summary and Response to Oral and Written Comments:

I. Written Comments

Nancy Moorhouse, Director of Safety, Teichert Construction, by letter dated June 23, 2006

Ms. Moorhouse’s letter contained 10 separate comments which will be addressed in order below.

Comment #1:

Ms. Moorhouse recommends that for consistency within Section 1541, a definition for “subsurface installation” should be added to Section 1540(b) based on Government Code (GC) Section 4216(j).

Response:

The Board believes the description of subsurface installation included in the language of Section 1541(b)(1) is to give notice of the intent and purpose of the standard and to clearly indicate to the employer what is meant by the term “subsurface installation.” Several commenters indicated that the definition in Section 1541(b)(1) is clearer than the Government Code.

Comment #2:

Ms. Moorhouse also recommends that the term high priority subsurface installation be defined in Sections 1540(b) and 1504 and the second sentence in Section 1541(b)(1)(B) be eliminated.

Response:

The Board believes Section 1541(b)(1)(B) is sufficiently clear with regard to indicating to the employer what is meant by the term high priority subsurface installation as it is essentially defined in subsection (B). Therefore, the Board believes no modification of the proposal is necessary.

Comment #3:

Ms. Moorhouse stated that the current proposed standard states the responsibility of an onsite meeting involves the excavator and the subsurface installation owner/operator representative. From a field application perspective, she raised the question about the utility company requesting a pre-job as well as the excavator when working in and around these types of facilities?

Response:

The Board believes that whether the owner/operator or excavator initiates the onsite meeting is of less concern than that the meeting occur prior to excavation in proximity to the high priority subsurface installation. This particular proposed standard is not intended to substitute or replace locating activities that must be performed prior to commencing any excavation operation. However, staff proposes to delineate excavator and owner/operator responsibilities and modify Section 1541(b)(1)(B) to clearly indicate that the onsite meeting shall be scheduled by the excavator and the owner/operator at a mutually agreed to time. Additionally, the proposal would clarify that it is the owner/operator’s responsibility to notify the excavator of the existence of high priority subsurface installations prior to commencing the excavation (legal excavation start date).

Comment #4:

Ms. Moorhouse stated a definition for qualified persons as used in Section 1541(b)(1)(C) requires additional training/certifications. She indicated that the concept of qualified persons may be better served if listed as a separate definition under Section 1540(b).

Response:

The Board believes a person who may not be aware of the definitions elsewhere in Title 8 may find the standard difficult to understand if the relevant qualifications as currently stated are located or relocated to another section. Consequently, the Board believes no modification of the proposal is necessary.

Comment #5:

Ms. Moorhouse recommended updating the proposed reference to the CGA Best Practices, Version 2.0, published December 2004, to the CGA Best Practices, Version 3.0, published March 2006, as referenced in Section 1541(b)(1)(C).

Response:

The CGA Best Practices, Version 3.0 represents the latest state-of-the-art in excavation practices designed to protect workers and the public from catastrophic accidents and damage to subsurface installations while safeguarding the public and the subsurface installation infrastructure critical to everyday life. It is at least, if not more effective than, version 2.0, and the Board therefore agrees with Ms. Moorhouse that it should replace the current proposed reference in subsection (C). The Board has modified the proposal accordingly.

Comment #6:

Ms. Moorhouse stated that the proposed standard in Section 1541(b)(1)(D), which requires employees be trained in the excavator notification and excavation practices required by Section 1541 and applicable portions of the GC, is ambiguous and could be interpreted to mean all employees (administrative, management, field operations people and employer subcontractors) must be trained and instructed, not just those directly involved in the excavation job. Ms. Moorhouse suggests a clearer definition of employees, such as employer's field employees who have responsibility for excavations, to reduce potential confusion.

Response:

The Board recognizes that existing Construction Safety Orders, Section 1509 Injury and Illness Prevention Program (IIPP) and General Industry Safety Orders, Section 3203, (IIPP) would apply to Section 1541 to the extent that all employees who are exposed to the hazards of excavation operations be trained and instructed. However, consistent with the intent of existing IIPP standards, the Board staff proposes to modify subsection (D) as suggested by Ms. Moorhouse to clearly indicate to the employer that it is employees who are directly involved in the excavation operation and are exposed to the hazards of excavation operations that are to be trained as required in subsection (D).

Comment #7:

Ms. Moorhouse stated that the Board may want the Division of Occupational Safety and Health (Division) staff to consider adding a new appendix to the standards specifically addressing the items outlined in (A), (B), (C) and (D). Ms. Moorhouse stated that she believes it follows the layout of Section 1541 in which additional appendices contain details about various aspects of excavation operations (e.g., requirements for protective systems and soils classifications).

Response:

The Board notes that the appendices to Section 1541.1 detail permissible slopes, as well as applications for timber and aluminum hydraulic shoring systems, that may be used for protection of workers in excavations. Presently, there are no appendices to Section 1541. Board staff does not believe that there is any necessity for appendices to further explain or provide examples relevant to the referenced proposed subsections in Section 1541. Therefore, the Board believes no modification is necessary.

Comment #8:

Ms. Moorhouse stated that there are many underground facility owners who are not members of a RNC. Given the proposed language in Sections 1541(b)(1)(A), (B) and (C), how would the regulated community know who are not members? Ms. Moorhouse stated she believes there needs to be discussion of methods to resolve how employers are to notify non-members.

Response:

The Board would like to emphasize that GC Section 4216.1 specifically requires all operators of subsurface installations to be members of a RNC and to participate in, and share in the costs of a RNC, with one exception: the California Department of Transportation (CalTrans). Therefore, in response to Ms. Moorhouse's question, given the CalTrans exception, the employer should assume that everyone else is a member of a RNC: either the South Shore Utility Coordinating Council or the Underground Service Alert (USA-Northern California or USA-Southern California).

Comment #9:

Ms. Moorhouse stated that with the addition of the term "boring" to the definition in Section 1541(b)(3), amendment of the Tunnel Safety Orders, Section 8408 should be considered so there is consistency between the proposed standards and the safety requirements within boring operations which are classified as a tunnel.

Response:

The Board believes there may be some merit to the suggestion that tunneling operations in the way of subsurface installations should conform to the locating requirements specified in Section

1541 or have equivalent provisions incorporated in the Tunnel Safety Orders (TSO). Unfortunately, the Board notes that substantive amendment of the TSO is outside the scope of this proposed rulemaking as noticed to the regulated public and would have to be considered in a separate rulemaking project. The Board staff will consider any necessary amendments to the TSO following adoption by the Board and approval by the Office of Administrative Law of the proposed amendments to Section 1541.

Comment #10:

Ms. Moorhouse stated that with regard to Section 1541(b)(5), the first sentence states that an excavator who causes or observes damage done to an underground facility shall notify the facility owner/operator or the RNC immediately. Additional language should be considered if high priority subsurface installations are damaged and the operator cannot be contacted, the excavator shall call 911 emergency services.

Response:

The Board agrees with Ms. Moorhouse to the extent that the proposal needs to be crystal clear as to the importance of the excavator contacting both (emphasis added) the facility owner/operator and 911 emergency services in the event of damage to a subsurface underground installation that could result in a catastrophic release of toxic, flammable, corrosive gas or liquid that endangers the life and health of workers and/or the public. The Board staff proposes to modify subsection (b)(5) to require that any excavator discovering or causing damage to a subsurface installation notify the owner/operator or contact the RNC to immediately obtain the subsurface installation operator contact information. In addition, staff proposes to modify the proposal further to state that if the damage, regardless of whether it is a high priority subsurface installation or not, is catastrophic in nature, both the owner/operator and 911 emergency services are to be immediately contacted.

The Board thanks Ms. Moorhouse for her comments and participation in the Board's rulemaking process.

Mr. Christopher Lee, Acting Regional Administrator, Region IX, U.S. Department of Labor, Occupational Safety and Health Administration, by letter dated July 10, 2006

Comment:

Mr. Lee stated that federal OSHA has completed their review of the proposed amendments to Title 8, Section 1541 and determined that the proposed amendments require additional levels of protection not found in the federal standards. Federal OSHA concludes that the proposal provides protection at least as effective, if not more effective than, the comparable federal standards.

Response:

The Board thanks Mr. Lee for his participation and support of the proposed amendments.

Mr. Marshall Johnson, AT&T and Ms. Tara Haas, Engineering and Utility Contractors Association (EUCA), California Regional Common Ground Alliance (CRCGA) Co-Chairs, by letter dated July 17, 2006

Comment:

Mr. Johnson and Ms. Haas suggested amending Section 1541(b)(1)(B) to clarify that the onsite meeting is to be scheduled by the excavator and the facility owner/operator at a mutually agreed to time. Mr. Johnson and Ms. Haas stated this is necessary to ensure clear direction on the procedures needed to have each entity understand and fulfill his/her responsibility in scheduling the meeting.

Response:

The Board agrees and the proposal has been modified as suggested by the commenters to address the scheduling of the onsite meeting by the excavator and facility owner/operator at a mutually agreed on time.

Comment:

Mr. Johnson and Ms. Haas also stated that the proposed language in Section 1541(b)(1)(B) is not clear with regard to the facility owner/operator communicating prior to the start date, to the excavator the legal excavation start date when the excavation is within 10 feet of high priority subsurface installations. If the information from the owner/operator is not communicated to the excavator before digging begins, the onsite meeting required by the proposal might not be scheduled until the excavator arrives onsite at the start of the project. Mr. Johnson and Ms. Haas suggest the proposal be modified to include language to the effect that the excavator shall be notified by the legal excavation start date and time, as defined in GC Section 4216.2(a)(2).

Response:

The Board agrees and the proposal has been modified to state that notification shall be made to the excavator by the facility owner of the existence of the high priority subsurface installation by the legal excavation start date and time in accordance with GC Section 4216.2(a). The Board notes that the phrase “legal excavation start date” refers to at least two working days, but not more than 14 calendar days in GC Section 4216.2(a)(2) as amended by SB 1359.

Comment:

Mr. Johnson and Ms. Haas suggest modifying Section 1541(b)(1)(C) to resolve the apparent conflict in terms between SB 1359 which requires that qualified person “shall” perform line-

locating activities and the proposal which uses the phrase “Only qualified persons “may” perform...”

Response:

The Board is in complete agreement with the commenters and the Board staff has modified the proposed language to eliminate the conflict between “may” and “shall” by having the proposal read: “Qualified persons shall....”

Comment:

Mr. Johnson and Ms. Haas stated that the term “in conflict” used in Section 1541(b)(1)(D)(3) should be deleted as unnecessary. In this way it will be clear to the employer that when the excavation is within the “approximate location” of a subsurface installation, the subsurface installation shall be exposed to determine its exact location.

Response:

The Board agrees with the commenter and notes that the commenters suggested modification would render the proposed language consistent with similar language addressing the determination of the location of subsurface installations contained in GC Section 4216.4(a) and that this is both logical and reasonable. The Board reasons that if an excavation is within 10 feet of a subsurface installation, it is going to be in conflict with it, therefore the phrase “in conflict” appears to be redundant and unnecessary. For this reason, the Board believes this phrase also should be deleted from Section 1541(b)(1)(B). The Board staff has modified the proposal as suggested by the commenters, deleting the phrase “in conflict” from Section 1541(b)(1)(D)(3) and Section 1541(b)(1)(B).

Comment:

Mr. Johnson and Ms. Haas stated that RNC’s are not obligated to inform facility owners of reported damages from excavators. Therefore, permitting the option to contact the facility owner or the RNC should not appear in Section 1541(b)(1)(D)(5). The commenters stated that the RNC will provide the excavator with contact information regarding the damaged facility owner. Consequently, Section 1541(b)(1)(D) should be modified to add the word “contact” in the first sentence to clarify that the excavator needs to contact the facility owner/operator to report damages or the RNC to get facility owner/operator information. The commenters further recommend subsection (D)(5) be modified to state that if high priority subsurface installations are damaged and the operator cannot be contacted, the excavator shall call 911 emergency services.

Response:

The Board agrees with the commenters to the extent that further clarification of subsection (D)(5) is necessary to require the excavator to contact the RNC if the necessary facility

owner/operator contact information is not readily available. Additionally, the Board believes that if a subsurface installation is damaged and a catastrophic release ensues which could expose workers, the public, and property to injury or damage, the excavator must contact both the facility owner/operator and 911 emergency services. The Board believes this should be done regardless of whether the installation is high priority or not. The Board staff has identified language contained in the CGA Best Practices Version 3.0, Chapter 5-25 that addresses this issue and has modified the proposal as suggested by the commenters to add the word “contact” and language requiring both facility operator and 911 emergency services to be contacted in the event of a catastrophic damage and release.

The Board wishes to thank Mr. Johnson, Ms. Haas and the Regional CRCGA for their comments and participation in the Board’s rulemaking process.

II. Oral Comments

Oral comments received at the July 20, 2006, Public Hearing in San Diego, California.

Mr. Larry Pena, Manager of Corporate Safety Policy and Regulations, representing Southern California Edison

Comment:

Mr. Pena stated the proposed language in Section 1541(b)(2)(B) (sic) should be modified to eliminate confusion. Mr. Pena referred to proposed language that states “...high voltage electric supply lines...” in the second sentence. This phrase in conjunction with the one that follows it which reads, “...conductors or cables that have a potential to ground of more than 60,000 volts...” might be interpreted to mean that to include high voltage safety or supply lines would be inclusive of voltages greater than 600 volts which is totally contradictory to the intent of the proposal which is to qualify only conductors carrying voltages greater than 60,000 volts as being a high priority subsurface installation. Mr. Pena suggested either deleting the phrase “...high voltage electric supply lines...” altogether or delete the comma between that phrase and the one that follows it for clarity.

Mr. Pena also stated that his office has been in contact with Senator Torlakson’s to propose a similar modification to SB 1359.

Response:

The Board agrees with Mr. Pena and has modified the proposal to delete the phrase “...high voltage electric supply lines...” so that the employer will understand that it is conductors or cables conveying voltages 60,000 volts or more that are considered to be high risk subsurface installations and not voltages below that. Board staff will communicate this proposed modification as well as the other modifications with Senator Torlakson, the author of SB 1359.

Dialogue between Ms. Tara Haas, Director of Government Relations, Engineering Utility Contractors Association (EUCA), Co-Chair of the California Regional Common Ground Alliance (CRCGA), and Dr. Jonathan Frisch, Occupational Safety and Health Board (OSHSB) member

Comment:

Ms. Haas stated that EUCA and the CRCGA have reviewed the proposed language and suggest a number of modifications pertaining to: Section 1541(b)(1)(B) regarding the role of the parties who are to hold an onsite meeting when high risk utilities are in proximity to the planned excavation: (1) deleting of “in conflict with” as redundant and unnecessary given the proposed high priority installation 10 foot threshold that triggers the need for the onsite meeting between the excavator and facility owner/operator, (2) clarifying when the meeting is to be scheduled, (3) using the permissive language with regard to clarifying that only the qualified person “shall” rather than “may” conduct line locating activities, and (4) modifying Section 1541(b)(1)(D)(5) (sic) to clarify that the excavator observing or causing damage to subsurface installations shall either contact the facility owner or contact the RNC to get the contact information and make contact with the facility owner. Ms. Haas also stated that if the excavator is not able to get the operators contact information from the RNC, the excavator should contact 911 emergency services, especially if a high priority subsurface installation is damaged. The CGA proposed language to address these issues.

Dr. Frisch expressed concern over Ms. Haas’ suggested modification to subsection (b)(5) and asked Ms. Haas if the CRCGA intended that if an excavator damaged a line and contacts the operator, the excavator is absolved of having to contact 911 emergency services. Ms. Haas responded that it was not the intent of the CRCGA to allow the excavator to forgo calling 911 emergency services if contact with the facility owner is made first. Dr. Frisch requested Board staff to work with the CGA to address this concern (clarify the proposed language) and eliminate any misunderstanding.

Response:

See the response to Ms. Haas’ written comment letter dated July 17, 2006.

The Board notes that staff and CRCGA have discussed Board member Frisch’s concern as described above and proposes to modify the proposal to clarify the excavator’s responsibility to contact the owner/operator and 911 emergency services if the damage that is caused or observed results in the escape of any flammable, toxic, or corrosive gas or liquid or endangers life, health or property. The Board notes that staff’s proposed modified language is verbatim of language contained in Chapter 5-25, of the CGA Best Practices, Version 3.0, March 2006.

The Board thanks Ms. Haas for her comment and participation in the Board’s rulemaking process.

Mr. John Vocke, Attorney, Pacific Gas and Electric Company (PG&E)

Comment:

Mr. Vocke stated that Board and Division staffs have done a very fine job of drafting the proposal. He expressed support of comments made by Mr. Pena and Ms. Haas.

Response:

See the response to Ms. Haas' written comment letter dated July 17, 2006, and the response to Mr. Pena's oral comment at the July 20, 2006, Public Hearing in San Diego, California. The Board thanks Mr. Vocke for his comment and participation in the Board's rulemaking process.

Ms. Elizabeth Treanor, Director of the Phylmar Regulatory Roundtable

Comment:

Ms. Treanor stated that she is in support of the comments made by Southern California Edison and PG&E.

Response:

See the response to Mr. Pena's oral comment at the July 20, 2006, Public Hearing in San Diego, California.

The Board thanks Ms. Treanor for her comment and participation in the Board's rulemaking process.

Dialogue between Mr. Don Heyer, Operations Manager of Underground Service Alert (USA) of Northern California and Nevada, and Dr. Jonathan Frisch, Board member

Comment:

Mr. Heyer expressed strong support of the comments made by Southern California Edison and the CRCGA. Dr. Frisch asked Mr. Heyer if all facility owner/operators are members of USA.

Response:

The Board notes that in accordance with GC Section 4216 et seq., with the exception of the California Department of Transportation, all owner/operators of subsurface installations are required to be members of a RNC (i.e., USA North or South).

See the response to Ms. Haas' written comment letter dated July 17, 2006, and the response to Mr. Pena's oral comment at the July 20, 2006, Public Hearing in San Diego, California.

The Board thanks Mr. Heyer for his comment and participation in the Board's rulemaking process.

Mr. Emmett Cooper, Pipeline Safety Engineer, State of California Department of Forestry and Fire Prevention (CDFFP), Office of the State Fire Marshal, Pipeline Safety Division

Comment:

Mr. Cooper stated the CDFFP is aware of the Walnut Creek explosion and welcomes anything that can be done to prevent such an incident from ever happening again. He stated the Pipeline Safety Division uses 49 Code of Federal Regulations (CFR) Part 195 for liquid petroleum. Contained within that standard is a requirement that the owner/operator shall be present during and after excavation to ensure the integrity of the pipeline. Mr. Cooper stated that such a requirement might be helpful as a modification to the Board staff's proposed language.

Response:

The Board staff's proposal addresses more than just petroleum pipelines which are exclusively regulated by standards contained in 49 CFR Part 195 and enforced in California by the CDFFP. The Board believes that the issue of oversight by excavators and facility owner/operators is adequately addressed by proposed language requiring pre-meetings between the excavator and owner/operator when the planned excavation is in proximity to a high priority subsurface installation. Additional proposed language to assure that the integrity of the pipeline is maintained is adequately addressed by the proposed language pertaining to the responsibility of excavators who cause or observe damage to any subsurface installation, including a petroleum line. The Board also notes that the CDFFP currently enforces provision of the 49 CFR to ensure that the owner/operator is present before and after excavation of petroleum pipelines. It would seem to be redundant, and unnecessary to have enforcement personnel from two different state agencies onsite to enforce the same provision.

The Board believes the proposed standards, GC 4216 as amended by SB 1359 and 49 CFR Part 195 together will be an even more effective deterrent against subsurface installation damage than what is currently provided by existing law, thereby greatly reducing the potential for catastrophic contact, explosion, fires or hazardous materials releases.

The Board believes no further modification of the proposed language as suggested by Mr. Cooper is necessary. The Board thanks Mr. Cooper and the CDFFP for its comment and participation in the rulemaking process.

Mr. Terry Thedell, Health and Safety Advisor, Sempra Energy Utilities (aka San Diego Gas and Electric)

Comment:

Mr. Thedell stated he supports the comments by PG&E and the CRCGA.

Response:

See the response to Ms. Haas' written comment letter dated July 17, 2006.

The Board thanks Mr. Thedell for his comment and participation in the Board's rulemaking process.

Summary and Response to Written Comments to the 15-Day Notice of Proposed Modifications Mailed on October 3, 2006.

Mr. Marshall Johnson, AT&T and Ms. Tara Haas, Engineering and Utility Contractors Association (EUCA), California Regional Common Ground Alliance (CRCGA) Co-Chairs, by letter dated October 19, 2006

Comment:

Ms. Haas and Mr. Johnson, representing the Common Ground Alliance, suggested modifying Section 1541(D)(5)[apparently meaning Section 1541(b)(5)], by using the language of GC section 4216.4(c) as set forth in Chapter 651 of the Statutes of 2006. Ms. Haas and Mr. Johnson also stated that with regard to Section 1541(b)(1)(B), no change to the Board's proposal is necessary.

Response:

The Board notes that the requirements of Section 1541(b)(5) are essentially the same as those contained in the chaptered GC section 4216.4(c), which becomes effective January 2007. Unlike GC section 4216.4(c) which contains permissive language with regard to the excavator responsibility to contact the regional notification center (RNC), the modified proposal requires the excavator to contact the RNC to obtain the identity of the subsurface installation owner/operator. The Board continues to believe in the importance of the excavator contacting 911 *and* the facility owner/operator in the event a high priority subsurface installation is damaged releasing hazardous materials into the environment which could expose workers and/or the general public.

The modified proposal is consistent with and meets the intent of GC section 4216.4(c) and therefore the Board believes the proposed modification is unnecessary.

Comment:

The CRCGA evaluated the proposed language for the Note to Section 1541(b)[Section 1541(b)(5)] and suggests it be deleted in favor of language to clarify to the employer the definitive distinction between excavator and facility owner/operator based on existing definitions contained in GC section 4216(c) and (h) respectively.

Response:

The Board concurs with the CRCGA representatives to use the definitions for excavator and operator contained in Chapter 651's version of GC section 4216(c) and (h) respectively.

The Board thanks Ms. Haas and Mr. Johnson for their comments and participation in the Board's rulemaking process.

Mr. Guy Prescott, Director of Safety, Operating Engineers, Local Union Number 3, by letter received on October 23, 2006

Comment:

Mr. Prescott's comment letter was subdivided into two distinct comments. In comment No. 1, Mr. Prescott stated that the modified proposal should recognize that smaller boring operations are now part of excavation operations. It may be useful to delineate between the Tunnel Safety Orders requirements for boring and Section 1541 to avoid any confusion between the scope of the respective safety orders. Mr. Prescott suggested Section 1541(b)(3) be further modified to include the phrase, "...which are not covered under the Tunnel Safety Orders," in the first sentence.

Response:

Mr. Prescott's comment relates to a portion of the proposal that was not proposed for modification as shown in the 15-Day Notice of Proposed Modifications, dated October 3, 2006, and is outside the scope of the proposed modifications. However, the Board staff will consider Mr. Prescott's comment for future rulemaking.

Comment:

In comment No. 2 which relates to Section 1541(b)(5), Mr. Prescott suggested further modification be made to include language that would require the employer to contact the appropriate emergency response personnel having jurisdiction as an alternative to contacting 911. Mr. Prescott stated the suggested modification is needed in case the excavation operation takes place in an area not served by 911.

Response:

The Board concurs with Mr. Prescott and believes it is reasonable to speculate that there may be areas of California that are so remote that 911 is not reachable either through landline or cellular telephone. In such cases, the only way for the entity performing the excavation to report a release may be to contact a local jurisdiction first responder group (e.g., fire department, police) and then the facility owner/operator.

Consequently, the Board has modified the proposal to require the excavator to contact 911 or if 911 is not available in the area, the appropriate emergency response personnel having jurisdiction. The proposal has also been modified to specifically require the facility owner/operator to be contacted. The Board thanks Mr. Prescott for his comments and participation in the Board's rulemaking process.

Dr. Terry Thedell, CIH, CSP, Health and Safety Advisor, Sempra Energy Utilities (aka San Diego Gas and Electric) by letter dated October 20, 2006

Comment:

Dr. Thedell stated that the proposed modifications to the proposal are an overall improvement; however, there remains one concern which should be addressed. Dr. Thedell suggested adding the words "...to a high priority subsurface installation..." in the last sentence of Section 1541(b)(1)(D)(5)[most likely meaning Section 1541(b)(5)]. Dr. Thedell stated that it is necessary to restrict the obligation of the excavator to hazardous material releases from high priority subsurface installations rather than for every instance involving a minor escape of odorized natural gas to ensure that the timely response capacity of fire department crews and other first responders are not compromised.

Response:

The Board concurs with Dr. Thedell to the extent that the intent of the modification is to ensure that when damage occurs to a subsurface installation that contains a hazardous material that could subject workers and the general public to an unsafe/unhealthy exposure level, that prompt action to mitigate the release be taken. Consistent with Chapter 651's amendment of GC section 4216.4, the Board proposes to modify Section 1541(b)(5) as recommended by Dr. Thedell.

The Board thanks Dr. Thedell for his comment and participation in the Board's rulemaking process.

Summary and Response to Written Comments to the Second 15-Day Notice of Proposed Modifications Mailed on December 11, 2006.

No written comments were received.

ADDITIONAL DOCUMENTS RELIED UPON

1. Senate Bill 1359 introduced by Senator Torlakson, February 21, 2006, with amendments through August 22, 2006.
2. Statutes of 2006, Chapter 651.

These documents are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board office located at 2520 Venture Oaks Drive, Suite 350, Sacramento, California.

ADDITIONAL DOCUMENT INCORPORATED BY REFERENCE

1. Common Ground Alliance (CGA), Best Practices, Version 3.0, Published March 2006.

This document is too cumbersome or impractical to publish in Title 8. Therefore, it is proposed to incorporate the document by reference. Copies of this document are available for review Monday through Friday from 8:00 a.m. to 4:30 p.m. at the Standards Board Office located at 2520 Venture Oaks Way, Suite 350, Sacramento, California.

DETERMINATION OF MANDATE

These standards do not impose a mandate on local agencies or school districts as indicated in the Initial Statement of Reasons.

ALTERNATIVES CONSIDERED

The Board invited interested persons to present statements or arguments with respect to alternatives to the proposed standard. No alternative considered by the Board would be more effective in carrying out the purpose for which the action is proposed or would be as effective and less burdensome to affected private persons than the adopted action.